IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARTIN J. PENTASUGLIO, JR.,	:	
	:	CIVIL ACTION NO. 3:CV-99-1396
Plaintiff,	:	
	:	
vs.	:	
	:	(JUDGE CONABOY)
HARTFORD INSURANCE GROUP,	:	(MAGISTRATE JUDGE BLEWITT)
	:	
Defendant.	:	

MEMORANDUM AND ORDER

Presently before the Court is Magistrate Judge Thomas M. Blewitt's March 14, 2001 Report and Recommendation (Doc. 24) regarding Martin J. Pentasuglio's action filed pursuant to the Americans with Disabilities Act (ADA) and the Pennsylvania Human Relations Act (PHRA). (Doc. 1). Plaintiff filed the instant action on August 6, 1999. The Defendant filed a motion for summary judgment on June 30, 2000. (Doc. 16). The Magistrate Judge recommends that Defendant's motion for summary judgment (Doc. 16) be denied, that the matter proceed to trial and that the Plaintiff be barred from presenting a claim for accommodation during the trial. (Doc. 24). The Defendant filed objections to the Report and Recommendation on April 2, 2001. (Doc. 26). As the Defendant has filed objections, we shall review the matter de novo. See Cipollone v. Liggett Group, Inc., 822 F.2d 335, 340 (3d Cir. 1987), cert. denied, 484 U.S. 976 (1987).

After a thorough examination of the record and carefully reviewing the matter de novo, we shall adopt the disposition set forth in the Report and Recommendation. (Doc. 24).

A motion for summary judgment can be a very powerful motion. It is a legal method of totally resolving a case without a trial based on a review of pleadings and submissions of the parties. Granting summary judgment is appropriate in cases where there are no significant facts in dispute. Because of the finality of granting a summary judgment motion, we must carefully examine the case and supporting documents along with the submissions from the Plaintiff who hopes to keep his case alive.

We follow considerable guidance in determining whether summary judgment should be granted. Summary judgment is proper 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." See Knabe v. Boury, 114 F.3d 407, 410 n.4 (3d Cir. 1997)(citing Fed.R.Civ.P. 56(c)). "[T]his standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-8, 106 S.Ct. 2505 (1986) (emphasis in original).

These rules make it clear then, that in order for a moving party to prevail on a motion for summary judgment, the party must show two things: (a) that there is no genuine issue as to any material fact, and (b) that the party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). This instructs us that a fact is "material" if proof of its existence or nonexistence would effect the outcome of the lawsuit under the law applicable to the case. Anderson, 477 U.S. at 248; Levendos v. Stern Entertainment Inc., 860 F.2d 1227, 1233 (3d Cir. 1988). We are further instructed that an issue of material fact is "genuine" if the evidence is such that a reasonable jury might return a verdict for the non-moving party. Anderson, 477 U.S. at 257; Hankins v. Temple University, 829 F.2d 437, 440 (3d Cir. 1987); Equimark Commercial Finance Co. v. C.I.T. Financial Services Corp., 812 F.2d 141, 144 (3d Cir. 1987).

Under this regimen that we follow, the Court is required to view the evidence in the light most favorable to the non-moving party. Consistent with this principle, the non-movant's evidence must be accepted as true and all reasonable inferences must be drawn in the non-movant's favor. J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990). However, the non-moving party may not rest on the bare allegations contained in his or her pleadings. Once the moving party has satisfied its burden of identifying evidence which demonstrates an absence of a

genuine issue of material fact, see Childers v. Joseph, 842 F.2d 689, 694 (3d Cir. 1988), the nonmoving party is required by Federal Rule of Civil Procedure 56(e)[1] to go beyond the pleadings by way of affidavits, depositions, answers to interrogatories or the like in order to demonstrate specific material facts which give rise to a genuine issue. Celotex Corporation v. Catrett, 477 U.S. 317, 324, 106 S.Ct. 2548 (1986). When Rule 56(e) shifts the burden of proof to the non-moving party, that party must produce evidence to show the existence of every element essential to its case which it bears the burden of proving at trial. Equimark, supra at 144.

FACTUAL HISTORY

The Plaintiff was hired by The Hartford Insurance Group ("Hartford") on July 6, 1971. Plaintiff began his employment with Hartford as a claims trainee, and he held this position until approximately 1972. He then began working in the Wilkes-Barre office as a claim representative. In or around 1977 or 1978, the Plaintiff was promoted to the position of senior claim representative in the Wilkes-Barre office. During his employment, Plaintiff also held several other positions, including that of

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[1] In relevant part, Rule 56(e) states:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

outside/resident claims representative working out of Hartford's Philadelphia regional office. (Doc. 24).

At the beginning of the Plaintiff's employment, Hartford maintained a Regional Claim Office in Lancaster, Pennsylvania ("Lancaster office") and two sub-offices in Allentown, Pennsylvania ("Allentown office") as well as in Wilkes-Barre, Pennsylvania. (Doc. 24).

In 1985, Hartford closed its Wilkes-Barre sub-office, which employed approximately twelve (12) employees. The Plaintiff, who was employed in the Wilkes-Barre office, was transferred, along with one other employee, to the Lancaster office. Approximately five other employees retired. (Doc. 24).

While at the Lancaster office, the Plaintiff worked as an outside claim representative responsible for sixteen (16) counties. Outside claim work requires field investigation, and is different from inside claim work, which is handled exclusively from a telephone and desk. However, Plaintiff points out that some outside claim representative work could be handled over the desk. (Doc. 24).

While he was assigned to the Lancaster claim office, Plaintiff's supervisor at that office assigned him a workload of both commercial and personal claims. Approximately fifty percent (50%) of his workload was commercial claims and fifty percent (50%) was personal claims. Commercial claims are claims arising from

commercial insurance policies, while personal claims arise from personal insurance policies. (Doc. 24).

Hartford states that it requires outside claim representatives to handle a minimum of thirty-five (35) claims per month. It is the Plaintiff's position that this was the standard number of claims handled and that such a standard was never discussed with the Plaintiff. (Doc. 24).

The claims charged to a claim representative each month are known as the "monthly average intake." Between March 1992 and February 1993, the Plaintiff had an average monthly intake of thirty-eight (38) claims per month. During March 1993 to March 1994, the Plaintiff had an average of forty-one (41) claims per month. Accordingly, while at the Lancaster office, the Plaintiff was meeting the minimum workload goals for an outside claim representative. (Doc. 24).

In 1996, Hartford restructured its claims department. Included in the restructuring was the decision to close the Lancaster office. Also, the method of handling commercial and personal claims was altered, insofar as all commercial claims were reassigned to the Philadelphia Regional Office in King of Prussia, Pennsylvania ("Philadelphia office"), and all personal claims were reassigned to a Connecticut claim office ("Connecticut office"). (Doc. 24).

At that time, Hartford employed approximately thirty (30) claims employees at the Lancaster office. The Plaintiff and approximately nine (9) other individuals employed in the Lancaster office were retained by Hartford. The Plaintiff had accepted a position as an outside claims representative in the Philadelphia office. (Doc. 24).

Despite the fact that the Plaintiff had accepted a position with the Philadelphia office, the elimination of the Lancaster office caused the Plaintiff to become depressed. He was experiencing heart palpitations, was very fatigued, was listless, and had crying spells. (Doc. 24).

In his new position, although his job title remained the same and he continued to work from his home and rarely went into the Philadelphia office, the type of claims Plaintiff handled were now limited to commercial claims; and his territory expanded to include Allentown, Bethlehem, Reading, Philadelphia, York and Lancaster. His team leader, Patricia Sullivan ("Sullivan"), quickly discovered in June 1996 that the number of claims in the Plaintiff's territory was low. From June 1996 until the first few months of 1997, Sullivan consistently reported to her supervisor, Patrick Fradella ("Fradella"), about the low number of outside commercial claims arising in the Plaintiff's territory. Plaintiff was therefore given additional claims work responsibilities. (Doc. 24).

On or about November 19, 1996, the Plaintiff's physician diagnosed the Plaintiff as having depressive and anxiety disorder. The Plaintiff's condition affected his work performance because he had a very difficult time communicating with other people, he was very fatigued, and he could not concentrate. In fact, the Plaintiff's physician, Dr. Minora prescribed Prozac in the fall of 1997 and restricted him from driving long distances. Plaintiff cannot remember relaying to Hartford his Prozac use or the limitations placed on his driving. (Doc. 24).

In December 1996, the Plaintiff informed Fradella that he had a mental condition. The Plaintiff then contacted Hartford's short-term disability office in Syracuse, New York. The Plaintiff advised an employee assistance program representative that he felt that he could continue to work. The Hartford representative indicated that the Plaintiff might need some time off. Plaintiff then worked for several more days before he decided to take disability leave. The Hartford representative with the employee assistance program then began the process of obtaining short-term disability benefits. (Doc. 24).

The Plaintiff received one hundred percent (100%) of his salary while on short-term disability leave from January 3, 1997 until July 7, 1997. (Doc. 24).

In the Spring of 1997, Fradella recommended that the Plaintiff's position of outside claim representative be eliminated

due to the change in business needs and the low volume of business within the Plaintiff's territory. While Hartford states that the Plaintiff's average monthly intake was only twenty-two (22) claims, only eight of which were outside claims, it is the Plaintiff's position that his average monthly intake during his tenure with the Philadelphia office was thirty-seven (37) claims, and of the thirty-seven (37), he averaged twenty-two (22) outside claims per month. (Doc. 24).

Hartford states that, in addition to the low volume of business, the cost of maintaining an outside claims representative is much greater than that of maintaining an inside claim representative. Additional costs include a company automobile, automobile maintenance, fuel, phone lines, fax machine and a computer line, which in of itself costs approximately $24,000.00 per year. (Doc. 24).

In June 1997, the Plaintiff received a letter from Hartford informing him that his six months of job protection for disability leave would end if he did not report to work by July 7, 1997. On or about July 2, 1997, the Plaintiff had been cleared by both his physician and Hartford's short-term disability office to return to work. The Plaintiff contacted Sullivan, and Sullivan directed him to report to the Philadelphia office on July 7, 1997. (Doc. 24).

On July 7, 1997, the Plaintiff reported to the Philadelphia office and Fradella informed him that his job had been eliminated.

The Plaintiff was presented with a letter that read, in part, that "[t]he purpose of this letter is to notify you that due to the changes in our business needs and the type of volume of business, we can no longer support your position as an outside claim representative working from your residence location." (Doc. 16, p. 6, citing Plaintiff's Deposition, pp. 186-88). Hartford offered the Plaintiff a period of sixty (60) days as transition assistance due to the elimination of his position to identify an alternate position. However, the Plaintiff was unable to take advantage of the offer because the news of the elimination of his position exacerbated his depression and necessitated his need for long-term disability. The Plaintiff went on long-term disability from July 7, 1997, until July 1999. On or about July 15, 1999, the Plaintiff wrote to Fradella to inquire about returning to his claims position. On or about August 23, 1999, the Plaintiff was notified that a position was available in environmental claims. Plaintiff inquired about the position but never received a response. (Doc. 24).

DISCUSSION

The ADA prohibits discrimination "against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of

employment." 42 U.S.C. § 12112(a). It is the Plaintiff's position that he was terminated from his employment due to his disability and that the reasons offered by the Defendant for his dismissal are a pretext for discrimination.

There are three steps in the analysis of pretext discrimination cases. McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973). First, the Plaintiff must establish a prima facie case of discrimination. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 506 (1993). Upon such a showing by the Plaintiff, the burden shifts to the employer to produce evidence of a legitimate, nondiscriminatory reason for the adverse decision. Id. Once the Defendant satisfies this burden, the burden of proof falls back onto the Plaintiff to show, by a preponderance of the evidence, that the Defendant's explanation is a mere pretext for discrimination. Id.

Because the Defendant's primary legal argument against the Report and Recommendation is that a pretext has not been established, we will address only that aspect of this action here. (See Doc. 26). Further, in the interest of economy, we adopt verbatim the Report and Recommendation with regard to the analysis and discussion about the prima facie case and the proffered legitimate non-discriminatory reason. (See Doc. 24, pp. 7-9).

Regarding the pretext issue, the Defendant's claims are as follows: (1) Job elimination while an employee is on disability is

not evidence of pretext; (2) An employer's failure to notify employees of internal staffing requirements is not evidence of pretext; (3) Plaintiff's dispute over how many claims were assigned to him is not evidence of pretext; and (4) The affidavit fails to provide evidence of pretext. (Doc. 26).

"[T]o defeat summary judgment when the defendant answers the plaintiff's prima facie case with legitimate, non-discriminatory reasons for its action, the plaintiff must point to some evidence direct or circumstantial, from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe than an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's actions." Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994)(citations omitted). The Plaintiff "must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder *could* rationally find them 'unworthy of credence,' Ezold v. Wolf, Block, Schorr,& Solis-Cohen, 983 F.2d [509], 531, and hence infer 'that the employer did not act for [the asserted] non-discriminatory reasons." Fuentes, 32 F.3d at 765 *quoting* Josey v. John R. Hollingsworth Corp., 996 F.2d 632, 638 (3d Cir. 1993).

It appears to this Court that the issue is the calculation of the monthly amount of Plaintiff's work production. The

Defendant's position is that the intake in the Plaintiff's assigned territories was "significantly low" and that in conjunction with the Defendant's "staffing assumptions" caused them to eliminate the Plaintiff's position. (Doc. 18, Ex. B at 13 and Ex. C at 21-22, 43-44). On the other hand, and not surprisingly, the Plaintiff claims that

> he can provide both direct and circumstantial evidence that in fact his average number of claims intakes per month was consistent with defendant's guidelines, and that the defendant's decision to eliminate his position was motivated by nothing more than intentional discrimination on the basis of his disability. (Doc. 18).

When we view this evidence and contradiction in a light most favorable to the Plaintiff, it is clear that granting summary judgment is inappropriate.

Furthermore, we look to the Supreme Court's decision in Reeves v. Sanderson Plumbing Products, Inc., 120 S.Ct. 2097 (2000). In Reeves, an age discrimination in employment case, the jury returned a verdict for judgment as a matter of law. The Court addressed "whether a plaintiff's prima facie case of discrimination (as defined in McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973)), combined with sufficient evidence for a reasonable factfinder to reject the employer's nondiscriminatory explanation for its decision, is adequate to sustain a finding of liability for intentional discrimination." Reeves, supra, at 2104. The Court's conclusion was "that proof of these two elements of a

discrimination case, i.e., a prima facie case of employment discrimination plus a rejection of the employer's explanation, would usually, but not invariably, suffice to support a plaintiff's verdict." Id. at 2109. And, while we are not at this time rejecting Hartford's explanation of why the Plaintiff's position was eliminated, we do find that a conflict clearly exists and it is of a material matter, such that a factfinder should decide.

In a final matter, the Defendant argues in its reply brief (Doc. 19) that any claim brought by the Plaintiff for accommodation should be barred in that the Plaintiff did not raise that issue with the PHRC or the EEOC. We have reviewed the complaint (Doc. 1) filed, which was dually filed with the PHRC and the EEOC and agree with the Report and Recommendation that it does not appear that the Plaintiff raised the issue of accommodation with the PHRC and the EEOC. Therefore, it would be inappropriate to allow this particular matter to proceed to trial.

CONCLUSION

Based on the aforementioned, it is inappropriate to grant the Defendant's motion for summary judgment. (Doc. 16). In addition, this matter should proceed to trial. Finally, the Plaintiff shall be barred from presenting a claim for accommodation during the trial of this matter.

_____
Richard P. Conaboy
United States District Judge

DATE:

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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARTIN J. PENTASUGLIO, JR.,	:	
	:	CIVIL ACTION NO. 3:CV-99-1396
Plaintiff,	:	
	:	
vs.	:	
	:	(JUDGE CONABOY)
HARTFORD INSURANCE GROUP,	:	(MAGISTRATE JUDGE BLEWITT)
	:	
Defendant.	:	

ORDER

NOW, this _____ Day of APRIL, 2001, it is hereby ORDERED that:

1. The Magistrate Judge's Report and Recommendation (Doc. 24) is ADOPTED.

2. Defendant's motion for summary judgment (Doc. 16) is DENIED.

3. The Plaintiff is barred from presenting a claim for accommodation during the trial of this matter.

4. This matter is set for the **June 2001 trial list**.

5. A pretrial conference in this matter is set for **Wednesday May 16, 2001 at 10 AM in chambers.**

6. Jury selection will commence on **Monday June 4, 2001 at 9:30 AM in Scranton, Pennsylvania.**

7. The Clerk of Court is directed to mark the docket.

_____
Richard P. Conaboy
United States District Judge